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OFFICE OF PETITIONS

In re Patent No. 7,601,740 : DECISION ON REQUEST
Weiner, et al. : FOR
Issue Date: October 13, 2009 : RECONSIDERATION OF
Application No. 10/759,561 : PATENT TERM ADJUSTMENT
Filed: January 15, 2004 : and
Atty Docket No.12560-016-999 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 14, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, three hundred and four (1,304) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and fifty-nine (1,259) days is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 16, 2007, and ends on October 13, 2009, the day before the RCE was filed, and is 637 (not 638) days. See 35 U.S.C. 154(b)(1)(B)(i).

A review of the application file history reveals that on July 10, 2009, patentees submitted a "Request to Correct Inventorship Under 37 CFR § 1.48(b)", after the mailing of the notice of allowance, which under the circumstances of this application, is a ground for reduction of patent term adjustment under 37 CFR 1.704(c)(10).

37 CFR 1.704(c)(10) provides:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

In this instance, it is undisputed that patentees filed the "Request to Correct Inventorship Under 37 CFR § 1.48(b)" after the mailing of the notice of allowance. It is noted that the period of reduction to the patent term adjustment is 44 days, beginning on the date the "Request to Correct Inventorship Under 37 CFR § 1.48(b)" was filed, July 10, 2009, ending on the date the response to the petition was mailed, September 1, 2009. Accordingly, a period of reduction of 44 days, will be entered.

In view thereof, the patent should have issued with a revised Patent Term Adjustment of one thousand, two hundred and fifty-nine (1,259) days, (1,541 days of Office delay - 49 (5 + 44) days of applicant delay - 233 of overlap).

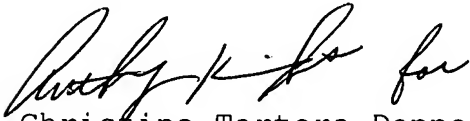
The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges receipt of \$200.00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or

adjusted by **one thousand two hundred and fifty-nine (1,259)** days.

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

A handwritten signature in cursive script, appearing to read 'Christina Tartera Donnell for', written in dark ink.

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,601,740 B2

DATED : Oct. 13, 2009

INVENTOR(S) : Weiner et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (899) days

Delete the phrase "by 899 days" and insert – by 1,259 days--